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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1944.

No. 1039

XENO W. PUTNAM and BESSIE L. PUTNAM,
*Petitioners,*

vs.

FEDERAL LAND BANK OF BALTIMORE.
*Respondent.*

## PETITION.

**For A Writ of Certiorari**
**To the Supreme Court of Pennsylvania.**

ELMER MCCLAIN,
Lima, Ohio,
*Counsel for the Petitioners.*

Lima, Ohio,
February 14, 1945.

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**PETITION.**

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(The brief in support of this petition begins at page 13.)

*To the Honorable Harlan Fiske Stone, Chief Justice, and the Associate Justices of the Supreme Court of the United States:*

Your petitioners respectfully show:

## I.

### A Summary Statement of the Matter Involved.

### The Federal Statute.

The case arises out of Section 75 of the Bankruptcy Act, 11 U. S. C. 203, which relates to proceedings for the rehabilitation of farmer debtors. The portion of the statute which is most particularly involved is Section 75 (n) and (p).

### The Constitution.

Article I, Section 8, Clause 4 of the Constitution, which gives power to the Congress to legislate on the subject of bankruptcies, also Article VI, clauses 2 and 3, which make the Constitution and the laws of the United States passed in pursuance thereof the Supreme Law of the Land binding on all state Constitutions and laws and upon all federal and state officers, are involved.

### The Statutes of the State of Pennsylvania.

The Statute of the State of Pennsylvania pursuant to which an order to deliver possession was entered by the Common Pleas Court of Crawford County, Pennsylvania, is the Act of April 20, 1905, P. L. 239, Section 1, which is the official citation to said Statute. A sale in foreclosure by the same court was under the Act of 1705, 1 Sm. L. 57, Section 6, which is the official citation thereto.

### The Nature of the Case.

The case is one in which the Court of Common Pleas of Crawford County, Pennsylvania, maintained and car-

ried on foreclosure proceedings against the farm of the appellants—one of whom was a farmer debtor under Section 75 of the Bankruptcy Act, 11 U. S. C. 203—while the jurisdiction over the subject matter and the person were exclusively in the United States District Court. The said state court proceedings which were so maintained while that court had no jurisdiction, consisted of a sale in foreclosure and a subsequent order for possession both to the mortgage holder who is respondent herein.

### The Issue.

The issue is a federal question involving the Constitution and the statute law of the United States and the statute law of the State of Pennsylvania.

Specifically, the question is whether a state court may proceed in the foreclosure of a mortgage on the farm of a farmer debtor while he has pending in the bankruptcy court his farmer debtor proceeding under Section 75 of the Bankruptcy Act.

### The Decision Below.

The decision of the State Court of Pennsylvania is not officially published.

it will be found in the record as certified by the Prothonotary of that court.

## II.

### Statement of the Basis of the Jurisdiction of This Court.

The jurisdiction of this court is conferred by Section 237 (b) of the Judicial Code; 28 U. S. C. 344 (b).

The petitioners have complied with Section 8 (a) of the Act of February 13, 1925; 28 U. S. C. 350. The judgment of the court below became final on November 27, 1934, when a petition for rehearing was denied. Such a petition for rehearing is by the rules of the Supreme Court of Pennsylvania required to be filed before a petition for appeal to this court may be presented. This petition for certiorari is filed within three months after the denial of the petition for rehearing.

## How the Federal Question was Raised and Disposed of.

### In Court of First Instance, the Court of Common Pleas.

In the answer to the respondent's Petition for Possession in the Court of Common Pleas, the petitioners alleged the filing of the farmer debtor petition of Bessie L. Putnam in the United Stafes District Court on September 10, 1936, and its approval (R. 78a, next to the last paragraph) and quoted and also incorporated the certificates of the Clerk of the United States District Court, showing that such farmer debtor petition was so filed on September 10, 1936, and was still pending. R. 79a, also Exhibits "A", "B" and "C" attached to the petition at R. 91a to 93a.

The Statutory provisions of Section 75 putting exclusive jurisdiction in the federal court and the decision of the court in *Kalb* v. *Feuerstein*, (1940) 308 U. S. 443, were quoted. R. 79a and 98a.

The nullity of the second sheriff's sale of September 15, 1939 (R. 9a) because of the pendency of the farmer debtor

proceedings instituted on September 10, 1936, was pleaded in the answer at R. 82a, bottom of page; at R. 83a, R. 85a; and also at other places throughout the answer which continues to R. 93a.

**The Opinion of the Court of Common Pleas.**

The opinion of the Court of Common Pleas recognized that the issue was solely one of jurisdiction. The opinion said:

> "After a careful examination of the pleadings, we are clearly of the opinion that the issue now raised is one of jurisdiction in the state court to make the sheriff's sale under which the petitioner claims title and right of possession, valid." R. 98a, last paragraph on page.

The Court of Common Pleas rested its decision upon the erroneous assertion that that court having previously held it had jurisdiction, the matter was settled by the doctrine of *res judicata*, and cited various decisions of the Pennsylvania state courts in its support.

It also erroneously held that the federal courts had dismissed the farmer debtor petition, whereas it had merely denied an application for appraisal, leaving the proceedings still pending and the exclusive federal jurisdiction still extant, as proved by the certificates of the Clerk of the Federal Court which were attached to the petitioner's answer as Exhibit "A", "B" and "C" and set out at R. 91a to 93a.

The decision and order of the Court of Common Pleas (93a to 105a) were based entirely on the pleadings which were (1) the Petition for Possession (R. 72a to 75a), and (2) the Answer thereto. (R. 77a to 93a.) In the words

of the Order for Possession, it was issued on the petition therefor "for want of a sufficient answer by defendants." R. 104a.

**In the Supreme Court of Pennsylvania.**

In the State Supreme Court, the petitioners again raised the federal question at their first opportunity.

In their "Statement of the Question Involved," they raised it in their Brief as follows:

> "Did the Common Pleas Court have jurisdiction over the person of the subject matter so as to have power to issue the order granting to the Federal Land Bank the right of possession of the farm of the defendants-appellants or to conduct the sheriff's sale in foreclosure proceeding that order."

They also raised the federal question in the State Supreme Court in their Assignment of Errors, which was incorporated in their Brief. They alleged that the Court of Common Pleas erred:

1. In holding that the State Court had jurisdiction to make the sheriff's sale, citing that court's opinion at R. 93a and R. 102a.

2. In holding that the question of jurisdiction of the state court is *res judicata*, citing the opinion at R. 99a, R. 100a and R. 102a;

3. In answering in the negative the question whether in possession proceedings instituted by a purchaser at sheriff's sale the defendant may again raise the question of jurisdiction which was likewise raised and decided against him in a petition to have the sale nullified and not appealed; citing the opinion at R. 100a.

4. In holding that the United States Court had divested itself of its exclusive jurisdiction over Bessie L. Putnam and her property, citing R. 102a and R. 103a.

**The Opinion of the Supreme Court of Pennsylvania.**

The opinion of the Supreme Court of Pennsylvania recognized the federal question as the only issue in the case and disposed of it by affirming the Court of Common Pleas.

In the 2nd and 3rd paragraphs of the opinion it said:

> "The answer filed admitted all of the facts except ownership by the Federal Land Bank of Baltimore, alleging that on September 10, 1936, Bessie L. Putnam filed in the United States District Court for the Western District of Pennsylvania, a petition under the Frazier-Lemke Amendment to the Bankruptcy Act, Section 75, Subsection (s), and that on July 2, 1942, and October 19, 1942, she was informed by the clerk of courts that the case was still pending."
>
> "The appellants state the sole question involved in this appeal to be 'Did the Common Pleas Court have jurisdiction over the person or of the subject matter so as to have power to issue the order granting to the Federal Land Bank the right of possession of the farm of the defendants-appellants or to conduct the sheriff's sale in foreclosure preceding that order.'"

It quoted the statement in the opinion of the court below that the issue of jurisdiction had theretofore been raised and decided adversely to the petitioners, and therefore, it said the issue was *res judicata.*

It quoted from an opinion of the United States District Court dismissing the farmer debtor petition of Xeno W. Putnam filed after the farmer debtor petition of Bessie L. Putnam was filed in which the United States District Court held that having once before dismissed a farmer

debtor petition which he had filed, he could not file another. That conclusion was founded on the assumption that the former dismissal was *res judicata*, so that another farmer debtor petition could not be filed. The conclusion was erroneous. *Wragg* v. *Federal*, 1943, 317 U. S. 325.

The Supreme Court of Pennsylvania like the Court of Common Pleas erroneously held that the denial of Bessie L. Putnam's petition for appraisal was a dismissal of her proceeding. That holding contradicted the certificates of the Clerk of the United States District Court in Exhibits "A", "B" and "C", at Record 91a to 93a, which assert that the farmer debtor case is still pending in the Federal Court.

The opinion also erroneously assumed that Bessie L. Putnam's farmer debtor proceeding had been once dismissed and thereafter reinstated. Said assumption is not supported by the record and is contrary to the facts. Upon that false presumption the State Supreme Court then proceeded to support its contention by quoting from the decision of this court in *Union Central* v. *Byerly*, (1940) 310 U. S. 1, in which the issue grew out of the action of a state court which took place in an interim between the dismissal of a farmer debtor proceeding, because this court had held the original section 75 (s) to be unconstitutional, and its subsequent reinstatement after the enactment of the present Section 75 (s). Such a state of facts never existed in the instant Putnam case.

It also grounded its conclusion of *res judicata* upon decisions of the Pennsylvania State Courts which were not applicable to conflicts between state and federal jurisdiction.

It also cited *Chicot* v. *Baxter*, 308 U. S. 371, a case under the first municipal debtor law which arose out of an entirely different situation. In that case there was no issue of conflicting, concurrent or exclusive jurisdiction in another court, state or federal. The municipal debtor statute under which the court fully administered the Chicot case to the final determination of all issues, was accepted by all parties and the orders of the court were fully complied with. Thereafter, this court in a case from another state declared the municipal debtor law as enacted to be unconstitutional. The precise question before the court then was, what efficacy was to be given to the orders of the court under the statute, accepted by all parties as constitutional, after the orders had been obeyed. That question, this court said, must be answered by regarding all of the acts of the court as the final determination of the case, as all parties had regarded them to be.

The statute (Sec. 75) placing exclusive jurisdiction in the United States Court and completely extinguishing the jurisdiction of the state court, has been at all times a constitutional enactment. The question in the Chicot case never arose in the Putnam case.

Thus the only issue before the state courts in this case was that of the force and validity of a statute of the United States. That issue was decided adversely to the federal law.

## III.

### The Question Submitted.

The question involved is whether a state court may maintain a foreclosure proceeding against a farmer debtor and his farm while there is pending in the federal court his farmer debtor proceeding under Section 75 of the Bankruptcy Act, 11 U. S. C. Section 203, there having been no compliance with Section 75 (o), 11 U. S. C. 203 (o).

The question is substantial because, if these decisions of the state courts are not reversed, Section 75 (a), (o) and (p) of the Bankruptcy Act are not the supreme law of the land, but the foreclosure statutes of the State of Pennsylvania override Section 75, and thereby the provisions of Article VI that the Constitution and Laws of the United States made under it, are the Supreme Law of the Land, and that the judges in every state shall be bound thereby notwithstanding any contrary state law, are corrupted.

## IV.

### Reasons Relied Upon for Allowance of a Writ of Certiorari.

1.

The decisions below involve a question of great importance in the administration of an act of Congress whose purpose is the rehabilitation of farmer debtors. Section 75 of the Bankruptcy Act. 11 U. S. C. 203.

2.

The decisions below violate Article I, Section 8, Clause 4, of the Constitution, which provides that:

> "The Congress shall have power . . . to establish . . . uniform laws on the subject of Bankruptcies throughout the United States."

3.

The decisions below violate Article VI, Clauses 2 and 3, of the Constitution, which provide that:

> "This Constitution and the Laws of the United States which shall be made in pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding. . . . All executive or judicial officers, both of the United States and of the several States, shall be bound by Oath or Affirmation to support this Constitution. . . ."

4.

The decisions below violate Section 75 (n), (o) and (p), 11 U. S. C. 203 (n), (o), and (p), and are contrary to the entire structure of Section 75, 11 U. S. C. 203.

5.

The decisions below are in direct conflict with the decisions of this Court in *Kalb* v. *Feuerstein*, 308 U. S. 133, and *Wright* v. *Union Central*, 304 U. S. 433.

6.

The farmer debtor proceeding referred to was continuously pending in the Federal Court from its initial filing through all the subsequent state proceedings. R. 92a, Exhibit "B" and Exhibit "C".

The state court proceedings so conducted were in contravention of the federal court's jurisdiction, and were therefore nullities by one or more of sections 75 (n), (o), and (p) of the Bankruptcy Act; 11 U. S. C., 203 (n), (o) and (p), as adjudicated in *Kalb* v. *Feuerstein*, 1940, 308 U. S. 433, and *Wright* v. *Union Central*, 1938, 304 U. S. 502.

The state court proceedings which were void were:

(1) Sales in foreclosure, R. 6a, top of page, and R. 9a, middle of page; (the first one was set aside by the State Court itself, R. 25a, order dated March 3, 1938, at bottom of page.)

(2) A Sheriff's deed to the mortgagee-purchaser, the present respondent, R. 10a, entry of September 3, 1940; and

(3) The Order of Possession to the mortgagee-purchaser, which is the subject of this appeal, R. 104a.

Wherefore your petitioners pray that a proper writ of certiorari may issue to the Supreme Court of the State of Pennsylvania, so that this cause may be determined by this court and for all other relief as may be proper.

Respectfully submitted,

ELMER MCCLAIN,
Lima, Ohio,
*Counsel for the Petitioners.*

Lima, Ohio,
February 14, 1945.

## BRIEF.

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**In Support of the Preceding Petition for Certiorari.**

Note: The Index precedes the petition for certiorari.

### I.

### The Opinion Below.

The opinion of the Supreme Court of Pennsylvania has not been officially reported. It appears in full in the proceedings certified of this court by the Prothonotary of that Court.

### II.

### Grounds upon which the Jurisdiction of the Court is Invoked.

The basis for the jurisdiction of this court has been set out at pages 3 and 4 of the preceding petition for certiorari.

### III.

### Statement of the Case.

### How and When the Federal Question was Raised.

The Federal Land Bank of Baltimore, filed in the Court of Common Pleas of Crawford County, Pennsylvania, its

petition for possession of the petitioners' farm of 185 acres, based upon the foreclosure of its mortgage judgment for $4464.04, and sale of the farm to it for $465.00 at Sheriff's sale. This petition was filed September 28, 1942, Record 72a. The filing date is shown at the bottom of Record 76a. The petitioners filed their answer in which they showed that the State Court had no jurisdiction because of the exclusive jurisdiction of the United States Court which jurisdiction had existed prior to the foreclosure sale, which continuously existed, and which so continued to exist in the federal court until long after the Petition for Possession was filed, thus making that sale a nullity. The petitioners said answer was filed December 7, 1942. Record 77a. The filing date is shown at the top of Record 91a. See the Certificates of the Clerk of the United States District Court at Record 16a, Exhibit "B", at Record 91a, Exhibit "A", and at Record 92a, Exhibit "B" and Exhibit "C", which show the federal jurisdiction still existed on October 19, 1942, that is, long after the Petition for Possession was filed. These exhibits were incorporated in the answer of the petitioners, and the court heard and determined the Petition for Possession upon the petition and answer, and nothing else. No evidence was presented, the pleadings being taken as stating the facts upon which the Order for Possession appealed from was based.

The "Order for Possession" entered by the Common Pleas Court was appealed to the Supreme Court of Pennsylvania, and affirmed. It is this order of affirmance which is the subject of this petition for certiorari.

The federal question was again raised in the Supreme Court of Pennsylvania in the petitioners' "Statement of the Questions Involved", and in the "Assignment of Er-

rors," at pages 1 and 4 of their "Brief for Defendants-Appellants,"—that being the method of stating and raising questions on appeal to the Supreme Court of Pennsylvania. They again, by leave of court at argument, restated and amplified their Assignments of Error in their "Amended Assignments of Error," filed shortly after argument, and long before the final decision of the court was rendered. The Federal question was also raised in the "Brief of Appellants" at pages 5 to 20 of their twenty-one page brief.

## IV.

### Specification of Errors.

The Supreme Court of Pennsylvania erred:

1. In holding that the State Court had jurisdiction to make the Sheriff's sale.

2. In holding that the State Court had jurisdiction to grant an Order for Possession to the purchaser at the Sheriff's sale.

3. In holding that the question of the jurisdiction of the State Court is *res judicata*.

4. In holding that in a possession proceeding by a purchaser at a Sheriff's sale in foreclosure, the defendant in the foreclosure proceeding may not then again raise the question that exclusive jurisdiction was in the Federal Court when the sale in foreclosure was held and when the petition for possession was filed and granted, if said question was decided adversely to the defendant in his applica-

tion to have the sale set aside and vacated, and the defendant took no appeal from such adverse decision.

5. In holding that if a State Court once in a proceeding decides that it has jurisdiction as against the claim that jurisdiction is exclusively in the Federal Court, and that therefore the State Court has no power, such decision is not subject to collateral attack.

6. In holding that the United States Bankruptcy Court had divested itself of its exclusive jurisdiction over the person and property of Bessie L. Putnam.

7. In holding that when the Federal Land Bank of Baltimore filed its petition for possession, it was the owner of the farm of which it sought possession.

## V.

## Summary of the Argument.

1.

While a farmer debtor proceeding is pending in a federal court and Section 75 (o), 11 U. S. C. 203 (o), has not been complied with, a state court has no power to proceed with, or maintain, any action in foreclosure or for possession of the land of the farmer debtor.

2.

A holding by a state court that it has such power cannot become *res judicata* and such holding may be collaterally attacked.

## VI.

### Argument.

On April 6, 1935, the Court of Common Pleas of Crawford County, Pennsylvania, rendered a judgment in foreclosure against the petitioners, Xeno W. Putnam and Bessie L. Putnam, in a proceeding known as *scire facias sur mortgage*, in the sum of $5564.04 against their 165 acre farm, R. 1a.

Thereafter, on September 10, 1936, Bessie L. Putnam instituted her farmer debtor proceeding under Section 75 of the Bankruptcy Act; 11 U. S. C., 203, by filing her farmer debtor petition which was approved on September 11, 1936, R. 91a, Exhibit "A", R. 116a, Exhibit "B". That proceeding is still pending. R. 92a, Exhibits "B" and "C".

The filing of the farmer debtor petition deprived the state courts of all jurisdiction over the person and property of the farmer debtor, which included her interest in said farm, as is shown by the following references to the farmer debtor law:

Section 75 (n) of the Bankruptcy Act; 11 U. S. C. 203 (n), provides that the filing of his petition immediately subjects the farmer debtor and all his property to the exclusive jurisdiction of the United States Court, including all real property and every equity or right in such property where the sale in foreclosure has not been confirmed or deed has not been delivered.

Sec. 75 (o) of the Bankruptcy Act; 11 U. S. C. 203 (o), provides that no proceeding in foreclosure which is pend-

ing at the time of the filing of a farmer debtor petition shall thereafter be maintained.

Sec. 75 (p) of the Bankruptcy Act; 11 U. S. C. 203 (p), provides that all of the farmer debtor's property shall be under the sole jurisdiction of the Federal Court as provided for in said Section 75.

These sections of the Bankruptcy Act have been fully sustained by this court. See:

*Kalb* v. *Feuerstein*, 308 U. S. 433;
*Wright* v. *Union Central*, 304 U. S. 502.

The farmer debtor proceeding referred to was continuously pending in the Federal Court from its initial filing through all the subsequent state court proceedings. R. 92a, Exhibit "B" and Exhibit "C".

The state court proceedings so conducted were in contravention of the federal court's jurisdiction, and were therefore nullities by one or more of sections 75 (n), (o), and (p) of the Bankruptcy Act; 11 U. S. C., 203 (n), (o) and (p), as adjudicated in *Kalb* v. *Feuerstein*, 1940, 308 U. S. 433, and *Wright* v. *Union Central*, 1938, 304 U. S. 502.

The state court proceedings which were void were:

(1) Sales in foreclosure, R. 6a, top of page, and R. 9a, middle of page (The first one was set aside by the state court itself, R. 25a, Order dated March 3, 1938, at bottom of page);

(2) A sheriff's deed to the mortgagee-purchaser, the present appellee, R. 10a, entry of September 3, 1940; and

(3) The Order of Possession to the mortgagee-purchaser, which is the subject of this appeal, R. 104a.

The state court of first instance, that is, the Court of Common Pleas of Crawford County, Pennsylvania, said in the opinion of the court that:

> "After a careful examination of the pleadings, we are clearly of the opinion that the issue now raised is one of the jurisdiction of the state court to make the Sheriff's sale, under which the petitioner claimed title and right of possession, valid." R. 99a, last paragraph on the page.

The same state court of the first instance further held that the fact that it had previously in the same foreclosure held that the foreclosure sale was valid, precluded the jurisdiction being questioned by collateral attack, under the doctrine of *res judicata*. That it could not thus validate its void action, taken in the complete absence of jurisdiction over person and subject matter, is a clear and long standing principle of law. A few cases are here cited to illustrate the point.

In a recent case, directly involving the subject of the absence of power in a state court during the pendency of a farmer debtor proceeding in a federal court, this court said, *Kalb* v. *Feuerstein*, 308 U. S. 433, 438:

> "The action of the Walworth county court was not merely erroneous but was beyond its power, void subject to collateral attack, and the determination whether

the Act did so operate is a construction of that Act and a federal question."

The opinion of this court in the Kalb case concluded at page 444 by saying:

"Congress manifested its intention that the issue of jurisdiction in the federal court need not be contested or even raised by the distressed farmer debtor." . . . "and considerations as to whether the issue of jurisdiction was actually contested in the county court, or whether it could have been contested, are not applicable where the plenary power of Congress over bankruptcy has been exercised as in this Act."

*Thompson* v. *Tolmie*, (1829), 27 U. S. (2 Pet.) 157, 163.

"If there is a total want of jurisdiction, the proceedings are void and a mere nullity, and confer no right, and afford no jurisdiction, and may be rejected when collaterally drawn in question."

In *Voorhees* v. *Jackson*, (1836), 35 U. S. (10 Pet.) 449, this said of itself, at page 474, of the opinion:

"If not warranted by the Constitution or the law of the land, our most solemn proceedings can confer no right which is denied to any judicial set under color of law, which can properly be deemed to have been done coram non judice; that is, by persons assuming the judicial function in the given case without lawful authority."

*Gantly* v. *Ewing* (1845), 44 U. S. (3 How.), 707, 713, 714, 715. The law of Indiana provided that before real estate could be sold upon execution the rents and profits must first be offered. The real estate was sold by the sheriff without first offering the rents and profits. This court held the sale to be utterly void. In answer to the argument of the unlucky purchaser (who was a stranger to the case) that he had no notice of the failure to first offer the rents and profits, the court said:

"This is a question of power and the answer to the suggestion rests on this: The Sheriff's duties are plainly prescribed; if he has no *power* to sell, want of knowledge on the part of the purchaser could not confer it, and no such contingency can be let in to help his deed."

*Williamson* v. *Barry* (1850), 49 U. S. (8 How.) 495, 501.

"But if it [a court] act without authority, its judgments and orders are nullities; they are not voidable, but simply void, and form no bar to a recovery sought, even prior to a reversal, in opposition to them; they constitute no justification, and all persons concerned in executing such judgments, or sentences, are considered in law as trespassers. This distinction runs through all the cases on the subject."

Page 543:

"The operation of every judgment depends upon the jurisdiction of the court to render it. Though there may be jurisdiction for certain purposes in a cause, that jurisdiction may be exceeded in the judgment. And whenever the right to property is claimed to have been changed under a judgment or decree by a court, and it is set up as a defense in another court, the jurisdiction of the former may be inquired into."

*Mitchell* v. *Maxent* (1866), 41 U. S. (4 Wall.) 237.

"Void process confers no right on an officer to sell property, and all acts done under it are absolute nullities."

*Gaines* v. *New Orleans* (1868), 73 U. S. (6 Wall.) 642.

"Where sales are irregular, but those who bought the property did it in good faith, and without notice, they are not protected except by the bar of time prescribed by the law."

The same principle was recognized by this court in

*Wright* v. *Union Central* (1938), 304 U. S. 502, where, as stated in the opinion at page 507:

> "A further aspect of the controversy between the petitioner and respondent may be noted. On September 13, 1935, prior to the debtor's filing of an amended petition, under Section 75 (a) as amended, respondent instituted an action in the state court for possession of the 80.31 acres.
>
> A judgment overruling a defense grounded on the bankruptcy proceedings and awarding possession and damages to respondent, was affirmed by the Supreme Court of Indiana, on April 2, 1937. *Wright* v. *Union Central*, 7 N. E. 2nd 206. A similar judgment with respect to the rest of the land was affirmed October 26, 1937. *Wright* v. *Union Central*, Ind. Sup. 10 N. E. 2nd 726."

The proceedings and orders of the Indiana state courts in the Wright case were not appealed to this court, nor was a writ of certiorari sought, yet they were not *res judicata*. They were subject, in an independent and altogether separate federal court proceeding, to the superior and exclusive jurisdiction of the United States Bankruptcy court under the same farmer debtor statute (Sec. 75 of the Bankruptcy Act; 11 U. S. C. 203) which is involved in this appeal.

Precisely like the Pennsylvania courts in this case, the Indiana state courts had awarded possession to the mortgagee-purchaser, which later became respondent in the United States Court proceedings when it wound up in this court as *Wright* v. *Union Central*, (1938), 304 U. S. 502. This court did not hesitate to entertain the collateral attacks on the judgments of the Indiana state courts and repudiate them.

This present Putnam appeal case is a stronger case than

the Indiana instance because here the farmer debtors seek a review of the Pennsylvania state court order by the United States Supreme Court, whereas no review of the Indiana state court's final orders was ever sought.

In short, "*res judicata*" is not applicable to an order issued by a court which had no jurisdiction over person or property to enter it. Such an order is a nullity because there is no **POWER** to issue it.

The question involved is substantial because, if these decisions of the state courts are not reversed, Section 75 (n), (o), and (p) of the Bankruptcy Act are not the supreme law of the land, but the foreclosure statutes of the State of Pennsylvania override Section 75, and thereby the provisions of Article VI that the Constitution and Laws of the United States made under it, are the Supreme Law of the Land, and that the judges in every state shall be bound thereby, notwithstanding any contrary state law, are corrupted.

## Conclusion.

The force and validity of Section 75 of the Bankruptcy Act, 11 U. S. C., 203, were drawn in question as the sole issue, both in the court of first instance and in the higher court of the state, and the decision of both courts was against them.

The force and validity of the statutes of the State of Pennsylvania, namely, The Act of 1705, 1 Sm L. 57, Sec.

6 (Smith Laws, relating to sales in foreclosure, and the Act of April 20, 1905, P. L., 239, Sec. 1, relating to orders placing purchasers at foreclosure sales in possession, were likewise drawn in question in both courts, and in both courts the force and validity of the state statutes were upheld against the statute of the United States.

Thereby, the courts below disposed of important federal questions in a manner conflicting with the statutes and with the Constitution of the United States and in conflict with the applicable decisions of this court, and in doing so radically departed from the accepted and regular course of procedure.

Therefore, this court has jurisdiction under Section 237 (b) of the Act of February 13, 1925, to revise the said order of the Supreme Court of Pennsylvania.

The petitioners therefore pray that this court take jurisdiction and hear their petition so that the wrong committed may be righted.

Respectfully submitted,

ELMER MCCLAIN,
Lima, Ohio,
*Counsel for the Petitioners.*

Lima, Ohio,
February 14, 1945.

Office - Supreme Court, U. S.
FILED
APR 11 1945
CHARLES ELMORE CROPLEY
CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1944.

## No. 1039

XENO W. PUTNAM AND BESSIE L. PUTNAM
*Petitioners,*

*vs.*

THE FEDERAL LAND BANK OF BALTIMORE,
*Respondent.*

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

CLARENCE A. PATTERSON,
FLORENCE LAYNOR WHEATLEY,
JOHN L. BITNER,
The Federal Land Bank of Baltimore,
24th and St. Paul Streets,
Baltimore, Maryland,
FRANK D. PRATHER,
Meadville, Pennsylvania,
*Attorneys for Respondent.*

The Daily Record Co., Baltimore, Md.

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ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

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## BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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### I.

### THE OPINION BELOW.

The petition for a writ of certiorari filed by the petitioners is for a review of a decision of the Supreme Court of Pennsylvania, cited as Federal Land Bank of Baltimore vs. Putnam, and reported in 350 Pa. 533; 39 A. (2d) 586.

### II.

### STATEMENTS PERTAINING TO JURISDICTION OF THIS COURT.

Petitioners filed their petition for a writ of certiorari in the Supreme Court of the United States on the 13th day of March, 1945. On March 23, 1945, respondent was furnishd

with a notice of the filing of the petition but the notice was not accompanied by a copy of the petition and brief as required by Rule 38 of this Court and this fact is reflected by respondent's acceptance of the notice as endorsed thereon. A copy of the petition and brief were first received by respondent on March 30, 1945. By reason of petitioners' failure to comply with said Rule 38, they have forfeited any right to have their petition considered by this Court.

Petitioners have stated that the jurisdiction of this Court is invoked on the authority of Sec. 237 (b) of the Judicial Code; 28 U. S. C. 344 (b). The petition and brief indicate that this section of the law is invoked to sustain the jurisdiction of this Court upon the theory that by the decision of the Supreme Court of Pennsylvania there is drawn in question the validity of Sec. 75 of the Bankruptcy Act, (n) (o) (p), 11 U. S. C. 203 (n) (o) (p). The validity of the cited sections of the Bankruptcy law were, at no time, in issue in the course of any of the proceedings upon which the decision of the Supreme Court of Pennsylvania was based. The issue before the Court was primarily an issue of fact and the question involved was whether there were pending any bankruptcy proceedings on behalf of the petitioner, Bessie Putnam, at the time the trial Court decided upon the question of its own jurisdiction to make sale of the mortgaged property and confirmed the sale. Upon the basis of the record, the Supreme Court of Pennsylvania found that the petition in bankruptcy filed by Bessie Putnam had been dismissed and was not pending at the time of the entry by the Trial Court of the order in question (R-56a). Having thus determined the factual question, the Supreme Court further determined that the order of the Trial Court confirming sale of the mortgaged property was fully effective to divest Bessie Putnam of all her right, title and interest in the property and that she had

no interest to which the jurisdiction of the Federal Court could attach through a subsequent unsuccessful effort on her part to reinstate the bankruptcy proceedings. The statute upon which the petitioners rely for the purpose of invoking the jurisdiction of this Court has no application to this case.

## III.

## STATEMENT OF THE CASE.

The statement of the case as it appears in the brief filed on behalf of the petitioners, pages 13 to 15, proceeds upon the theory that the Trial Court was divested of its jurisdiction in foreclosure proceedings on September 10, 1936, when Bessie Putnam filed a petition under the Frazier-Lemke Amendment to the Bankruptcy Act (Sec. 75), and that because of continued pendency of the bankruptcy proceedings, the Trial Court did not, at any time, become revested with jurisdiction over said petitioner or her property. In support of this theory the petitioners rely upon certain certificates of the Clerk of the United States District Court, described as Exhibit "A" (R-91-a), Exhibit "B" (R-16-a and R-92-a) and Exhibit "C" (R-92-a). The trial Court, however, deemed this evidence insufficient to establish pendency of the bankruptcy proceedings as it had before it and relied upon the following:

1. The reported decision of the United States District Court "In re: Bessie Putnam" (27 Fed. Supp. 812), where it appears that the petition dated September 10, 1936, was determined by the Federal Court to be without merit and was dismissed on August 5, 1937. (R 42a and 43a—Exhibit "D").

2. The order of the United States District Court dated July 9, 1940, dismissing a further petition filed by Bessie Putnam on August 23, 1939, under Section 75 (s) of the Bankruptcy Act (R-50a).

The following is a chronological statement of the major events leading to the judgment on which the petition for a writ of certiorari has been filed:

March 19, 1935—Writ of sci. fa. sur mortgage issued (R-1a).

April 6, 1935—Judgment taken against petitioners (R-1a).

September 10, 1936—Petition filed by Bessie Putnam under Sec. 75 of the Bankruptcy Act (R-16a and 92a).

August 5, 1937—Bessie Putnam's petition dismissed by United States District Court (R-42a and 43a—Exhibit "D").

February 10, 1938—Petition of Bessie Putnam to vacate order of August 5, 1937, refused (R-44a—Exhibit "F").

October 19, 1938—Bessie Putnam's appeal to United States Circuit Court of Appeals dismissed (R-47a—Exhibit "I").

September 15, 1939—Sheriff's sale (Referred to in order of Court R-52a).

July 9, 1940—Petition of Bessie Putnam for appraisal refused and denied by United States District Court (R-50a).

July 23, 1940—Motion of petitioners in the form of exceptions to sheriff's sale dismissed and sheriff directed to deliver deed (R-56a).

September 5, 1940—Petition in Trial Court to declare foreclosure proceedings void and to refuse confirmation of deed (R-62a).

May 5, 1941—Petition to declare foreclosure proceedings void dismissed and rule to show cause discharged (R-72a).

September 28, 1942—Citation awarded upon respondent's petition for possession of real estate (R-76a).

November 8, 1943—Order granting possession (R-104a).

November 26, 1943—Notice of appeal of petitioners to Supreme Court of Pennsylvania (R-107a).

The foregoing calendar indicates that a petition filed by Bessie Putnam under Section 75 of the Bankruptcy Act was dismissed on August 5, 1937, and that her petition for vacation of the order of August 5, 1937, was refused on February 10, 1938. An examination of the record further shows that a petition of Bessie Putnam filed on August 23, 1939, for an appraisal of her property under Section 75, subsection (s), of the Bankruptcy Act was refused by an order of the District Court entered July 9, 1940 (R-50a) upon the ground that her right to an appraisal had been determined and was res adjudicata by virtue of the order entered on February 10, 1938. The record establishes that no proceedings in bankruptcy effective to oust the jurisdiction of the Trial Court were pending at any time subsequent to February 10, 1938, so that the Trial Court was vested with sole jurisdiction of both of the petitioners and their property on the date of sale and on the date of confirmation.

## IV.

## SUMMARY OF THE ARGUMENT.

Where no bankruptcy proceedings are pending at a time when a State Court dismisses exceptions questioning jurisdiction of the State Court to hold a sheriff's sale, and no appeal is taken, the jurisdictional question becomes res adjudicata and no federal question may be invoked on such a record.

## V.

## ARGUMENT.

The argument of the petitioners is that the filing of a petition in bankruptcy subjects a bankrupt and all his property to the exclusive jurisdiction of the United States Court in which the petition is filed, and as a corollary of this proposition, a State Court can have no jurisdiction of the person or property while the bankruptcy proceedings are pending. The theory advanced is uncontroverted and it is undisputed that Sec. 75 of the Bankruptcy Act, 11 U. S. C. 203 is the supreme law of the land by virtue of Article I, Sec. 8, Clause 4 of the Constitution, and by virtue of Article VI, Clauses 2 and 3 of the Constitution, but the theory has no application to this case.

The argument of the petitioners completely ignores the fact that no proceedings in bankruptcy were pending when the trial Court entered its order of July 23, 1940, (R-56a) denying their petition in the nature of exceptions to the sheriff's sale. On that date the Trial Court had jurisdiction of Bessie Putnam and her property and by its order she was divested of any and all interest which she had in the property, and thereafter she had no interest which could be subjected to the jurisdiction of the Bankruptcy Court. The existence of this fact renders all of the argument made on behalf of the petitioners and the authorities cited in support thereof wholly inapplicable to this case.

**A. The bankruptcy proceedings relied upon by the petitioners had been dismissed by the Federal Court approximately five years before possession proceedings were filed in the Trial Court.**

The defense alleged in the answer in the possession proceedings (R-77a) and which the Trial Court found to be insufficient as a matter of law, consists basically of an alle-

gation that on September 10, 1936, Bessie Putnam filed a petition under Section 75 of the Bankruptcy Act and an allegation that on July 2, 1942, and on October 14, 1942, Bessie Putnam was informed by the Clerk of the Federal Court at Pittsburgh that the case was still pending on the docket. The answer filed does not allege that any other petitions were filed by Bessie Putnam with respect to these bankruptcy proceedings subsequent to 1936. In considering the sufficiency of the answer the Trial Court had before it not only the answer itself but also the reported decision of the United States District Court involving the bankruptcy proceedings referred to in the answer. Reference to this reported decision (27 Fed. Supp. 812) will reveal that the petition filed by Bessie Putnam on September 10, 1936, was dismissed on August 5, 1937, and that subsequently, to wit: on February 10, 1938, the United States District Court (Gibson, J.) denied a petition filed by Bessie Putnam to vacate the order of dismissal. An appeal was taken by Bessie Putnam to the Circuit Court of Appeals and was dismissed for lack of prosecution. (R-47a—Exhibit "I"). In the face of this final adjudication that the petition referred to in the answer was without merit, it was not error for the Trial Court to reject the allegation of the pleading that the petition remained undisposed of on July 2, 1942, and October 14, 1942, and it was not error for the Trial Court to reject the inference from this allegation that the petition filed in 1936 was pending in the Federal Court on the day of the Sheriff's sale and on the day exceptions to the Sheriff's sale were dismissed. It is incontrovertible that the petition of 1936 had been dismissed for approximately five years prior to the filing of the answer. It was not pending in the Federal Court either on the day of the Sheriff's sale or on the day exceptions to the Sheriff's sale were dismissed.

In deciding this case the Trial Court gave to the petitioners the full advantage of its knowledge, aliunde the proceedings, of the status of proceedings which had been instituted in the Federal Court. Through its knowledge of prior proceedings before it, the Trial Court gave full consideration to the legal effect of the fact that on August 23, 1939, Bessie Putnam had filed in the Federal Court a further petition to be adjudged bankrupt under Section 75(s). (The Trial Court previously had before it the petition of Bessie Putnam to set aside the sheriff's sale and enjoin the execution of the deed upon the allegation that the further bankruptcy petition of August 23, 1939, had been filed in the Federal Court.) (R-31a). In these prior proceedings and in considering the rights of Bessie Putnam in the possession proceedings, the Trial Court also had before it the order entered by the United States District Court on July 9, 1940, dismissing the petition filed by Bessie Putnam on August 23, 1939. (R-50a). In its opinion (R-98a) accompanying the order from which an appeal was taken the Trial Court made reference to its knowledge that the petition had been filed and dismissed even though the answer filed failed to make any reference thereto. Thus, in considering the case the Trial Court gave to the Putnams the full advantage of its knowledge of the history of this case in the Federal Court notwithstanding their failure to allege such matters in their answer. The Trial Court treated the answer as if it had alleged that the petition of August 23, 1939, had been filed in the Federal Court. The Trial Court said:

> "The Order very clearly shows that all proceedings in the said Court (District Court) are now dismissed and the petition of Bessie L. Putnam, Debtor, is refused and denied. With the entry of the order, there is nothing now pending in the United States District Court which could affect the action of this court on the

pending motion and rule. Under such existing circumstances, why should additional and useless costs be incurred in the instant proceeding? The Sheriff's sale was legally carried to the point it was stayed. To carry the stay further would be but unreasonable delay and in all probability of no avail to defendants. Such delay might work undue hardship and loss upon plaintiff. We can but conclude that the motion must be dismissed and the rule discharged." (R-55a)

**B. The issue of law raised by the petition for a writ of certiorari has previously been determined by the Supreme Court of the United States.**

The facts involved in the case of Union Joint Stock Land Bank of Detroit vs. Byerly, 310 U. S. 1, 60 Sup. Ct. 773, cited by the Supreme Court of Pennsylvania, are almost identical with the facts in the instant case, and that decision controls the issues here involved. In the Byerly case, proceedings were instituted by the Union Joint Stock Land Bank for foreclosure of a mortgage executed in its favor by Byerly. Five (5) days prior to the date set for sale of the property, Byerly filed a petition in the United States District Court under Sec. 75 of the Bankruptcy Act and the District Court issued an order restraining further proceedings in the foreclosure suit. This order was subsequently modified by the District Court to permit sale of the premises but to restrain other proceedings, particularly confirmation of sale and execution of a sheriff's deed and thereafter the property was sold. No agreement could be reached by Byerly's creditors in the bankruptcy proceedings and he filed an amended petition to be adjudged a bankrupt under subsection (s) of Sec. 75 of the Bankruptcy Act. Thereafter certain features of subsection (s) were held by this Court to be unconstitutional, and Byerly's petition and amended petition were dismissed.

The sale of the property in the foreclosure suit was then confirmed by the State Court and a sheriff's deed was delivered and recorded. After confirmation of the sale by the State Court, Byerly moved for reinstatement of his bankruptcy case in the District Court and the motion was granted. The District Court, on motion of the Union Joint Stock Land Bank entered an order disclaiming the real estate. Byerly appealed from the order and the matter ultimately reached this Court under a writ of certiorari.

The Union Joint Stock Land Bank asserted, First: That Byerly's remedy was to appeal from the order of the District Court which authorized the State Court to sell the mortgaged premises and that, since Byerly had not availed himself of this remedy, the judgment of the District Court was res adjudicata and not subject to collateral attack. Second: That, although the State Court was without jurisdiction while the original bankruptcy proceedings were pending, it regained jurisdiction by the termination of the bankruptcy case and had exclusive jurisdiction of the parties and the subject matter when the decree of confirmation was entered and that the decree of confirmation, therefore, could not be collaterally attacked in the United States District Court or elsewhere. The Supreme Court of the United States in sustaining these views reversed an order of the Circuit Court of Appeals, and in the opinion of this Court Mr. Justice Roberts said:

> "Second. The termination of the bankruptcy proceeding restored the jurisdiction and power of the State court and its further proceedings in the foreclosure suit were not subject to attack in the bankruptcy court. * * *
>
> Although the State court's jurisdiction was *superseded* by that of the bankruptcy court, *it again attached* upon the dismissal of the bankruptcy case, and,

> thenceforward, as respects the foreclosure suit, and the State court's procedure, it was as if no bankruptcy case had ever existed. With jurisdiction of the parties and the subject matter, the State court entered a decree confirming the sale and authorizing a deed, the sheriff executed his deed, which was duly recorded, and the petitioner went into possession as purchaser of the mortgaged premises. Thereafter the respondent moved for reinstatement of the bankruptcy case and his motion was granted. In the interim, no bankruptcy cause was pending and the State court had jurisdiction to proceed as it did." (Italics supplied.) (p. 777.)

The fact which controlled the decision of this Court in the Byerly case was that the State Court confirmed the sale at a time when no bankruptcy proceedings were pending and when the State Court was unquestionably vested with sole and exclusive jurisdiction over the persons and the subject matter. There was no conflict of jurisdiction.

An analogous situation exists in the instant case. Subsequent to the date of sale the Putnams filed a petition in the Trial Court to have the sheriff's sale set aside and to enjoin the execution of deed. This petition was in the nature of exceptions to the sale. The petition of August 23, 1939, which Bessie Putnam filed under Section 75 of the Bankruptcy Act, was dismissed by the United States District Court on July 9, 1940, upon the ground that the subject of the petition was res adjudicata under an order of the same court entered on February 10, 1938. On July 23, 1940, at a time when no bankruptcy proceedings were pending and when the Trial Court was unquestionably vested with the sole and exclusive jurisdiction of the persons and the subject matter, the Court entered an order sustaining its jurisdiction to make sale of the property and denying the petition that the sale be set aside. No appeal was taken. In the light of the similar factual sit-

uations, the principles enunciated by this Court in the Byerly case are wholly applicable to and controlling on the points involved in this controversy.

The decision in the Byerly case was followed and relied upon in the case of Wheat vs. Texas Land and Mortgage Co., Ltd., et al., 163 S. W. (2d) 880-885, involving similar facts. A writ of certiorari was denied by the Supreme Court of the United States in that case (319 U. S. 751; 63 S. Ct. 1162), and a petition for a rehearing was also denied (319 U. S. 785; 63 S. Ct. 1431).

### C. No Federal Question is Involved.

In the light of the decision of this Court in the Byerly case, it is apparent that if Bessie Putnam had pending no proceedings in bankruptcy on July 23, 1940, the date on which the Trial Court entered an order denying the petition to set aside the foreclosure sale and to enjoin execution of deed, this case involves no federal question. A reversal of the decision of the Trial Court as affirmed by the Supreme Court of Pennsylvania would not subject the property involved to the jurisdiction of any Federal Court but would serve merely to restore the property to the Putnams unaffected by any legal proceedings. The petitioners attempt to support the assertion that bankruptcy proceedings were pending upon the basis of the certificates of the Clerk of the United States District Court, marked Exhibits A, B and C. (R-91a, 16a and 92a). The decision of the Trial Court sustained by the Supreme Court of Pennsylvania rejected this evidence and relied upon the reported decisions covering the proceedings in the District Court with respect to the petition of Bessie Putnam filed on September 10, 1936, to which reference has been specifically made in this brief.

The Supreme Court of Pennsylvania concluded on the basis of the record that no bankruptcy proceedings were pending on July 23, 1940, and that hence there existed no question with respect to the Trial Court's jurisdiction on that date to enter the order which in effect confirmed the foreclosure sale, since on that date the Trial Court was the only Court which had any jurisdiction in the premises.

Whether the question presented by the petition in the Trial Court to set aside the foreclosure sale was res adjudicata presents no federal question, since there existed no conflict of jurisdiction between the Federal and State Courts on the date on which the Trial Court entered its order. Under such circumstances, whether the Trial Court was correct in its conclusion is subject to review only by the Supreme Court of Pennsylvania.

**D. The Record will justify the Conclusion by the Court that this petition for certiorari was filed for the purpose of delay.**

This case reaches this Court against a background which is significant. The Respondent has been seeking to liquidate this loan for nine years. At the time foreclosure proceedings were commenced in 1935 the mortgagors, who are the petitioners in this cause, had defaulted in the payment of four semi-annual instalments and had neglected to pay the taxes assessed against the mortgaged premises for 1931 and subsequent years. At that time the balance due on the mortgage was $5,549.66. Since the proceedings were commenced taxes and interest for nine additional years have accrued and are a charge against the loan. The total debt represented by the security involved in this case is now almost $11,000.00, no part of which has been paid. The mortgagors have been in possession of the property continuously and are still in possession.

In the reported opinions of the Federal Court in this case this background is summarized as follows:

> "The Commissioner reported that the debtor had not farmed over an acre of land for over fifteen years; that he had no assets other than personal property of a nominal value; that he had no present income other than small sums received for magazine articles; that he had no livestock on the farm; that taxes had not been paid on the property for six years, and that the debtor had failed to show any feasible plan whereby his debts could be paid if an extension were allowed." (In re: Putnam, 27 Fed. Supp. 812).

and

> "The debtor himself testified he has not been running the farm for profit, that he makes a small garden for his own use. The former reports of Conciliation Commissioners find that not over an acre had been plowed for fifteen years; about eight years' taxes and delinquent interest exist; the debtor has no income, no stock, no equipment, except a tractor bought in 1920". (In re: Putnam, 27 Fed. Supp. 813).

In its opinion of May 5, 1941, the Trial Court said:

> "In the instant case, defendant and her co-title holder have for divers reasons advanced stayed the proceedings for a period in excess of five years, during which time the farm has not been operated. In consequence of which the improvements have fallen into a poor state of repair—no payments, principal or interest, have been made upon the undenied indebtedness and taxes have been allowed to go unpaid and accumulate." (R-71a).

The petitioners have remained in possession of the property involved for a period of nine years through the device of filing successive petitions in the State and Federal Courts. They have filed numerous petitions in the Fed-

eral Court and five separate petitions in the Trial Court. The several petitions in the Federal Court all involved vain attempts to bring themselves within the scope of Section 75 of the Bankruptcy Act and all these petitions were dismissed by the Federal Court. (In re: Putnam, 27 Fed. Supp. 812-813). Instead of appealing from adverse decisions they continued to file successive petitions in utter disregard of prior adjudications. This same technique was employed in the Trial Court. As previously noted, the petition to enjoin the delivery of the sheriff's deed—the petition to declare the foreclosure proceedings void, and the answer in the possession proceedings—each raise exactly the same question of jurisdiction. On this phase of the case the Trial Court said:

> "The record discloses that during the past several years defendants, on at least five different occasions, have raised issues for consideration of the Court involving jurisdiction of the Court, validity of the Sheriff's sale, etc., all of which have been decided against defendants, in written Opinions filed of record as evidenced by the following Orders, and to which no objections have been made or appeals taken, all of which we believe will be self-explanatory." (See Opinion of Nov. 8, 1943.) (R-96a).

The complete absence of merit in all of these petitions justifies the conclusion that the several proceedings were designed to produce delay and continued possession. This conclusion is wholly consistent with the fact that so long as there is a proceeding pending the petitioners will remain in possession. The right to litigate does not include the abuse of legal process. The pattern formed by the record is such that this Court can properly find that the petition for the writ of certiorari was filed for the purpose of delay.

## CONCLUSION.

1. Petitioners have forfeited the right to a consideration of their petition for a writ of certiorari by reason of their failure to comply with Rule 38.

2. No bankruptcy proceedings were pending on the date on which the Trial Court entered an order which constituted a confirmation of a sale of property in foreclosure proceedings and on that date there existed no conflict of jurisdiction between the Federal and State Courts. Thereafter, the petitioners had no interest in the property which could be subjected to the jurisdiction of the Federal Courts in proceedings under Section 75 of the Bankruptcy Act and it follows that no federal question is involved in this matter.

3. The issue of law raised by the petition has previously been decided by the Supreme Court of the United States in Union Joint Stock Land Bank v. Byerly, supra.

4. There is ample evidence on the record to support the conclusion that the petition is intended for delay.

Respectfully submitted,

CLARENCE A. PATTERSON,

FLORENCE LAYNOR WHEATLEY,

JOHN L. BITNER,

FRANK D. PRATHER,

*Attorneys for Respondent.*

(27)

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1944.

## No. 1039

XENO W. PUTNAM and BESSIE L. PUTNAM,
*Petitioners,*

vs.

FEDERAL LAND BANK OF BALTIMORE,
*Respondent.*

**On Petition For a Writ of Certiorari to the Supreme Court of Pennsylvania.**

**PETITION FOR REHEARING.**

ELMER MCCLAIN,
Lima, Ohio,
*Counsel for Petitioners.*

U. S. Law Printing Co., Phone Lakeview 6581, Chicago, Illinois

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**On Petition For a Writ of Certiorari to the Supreme Court of Pennsylvania.**

## PETITION FOR REHEARING.

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petitioners respectfully present their petition for rehearing under the circumstances related in heading I which follows.

## I.

## STATEMENT.

The petitioners' Petition for Certiorari was denied on April 23, 1945 before either the petitioners or their counsel had seen the "Brief in Oppositon to Petition for Writ of Certiorari" which was filed at a date unknown to either.

Notice of the filing of the petition, together with a copy of the printed record in the court below, the supporting brief, and the form of acknowledgment furnished by the clerk upon the filing of the Petition for Certiorari were mailed to the respondent as provided by Rule 38 (3) of this Court.

No acknowledgment by the respondent was received within fourteen days of the filing of the petition, whereupon counsel for the petitioners on March 27, 1945 forwarded his proof of service to the clerk who acknowledged its receipt on March 29, 1945.

On March 28, 1945 counsel for the petitioners received back from the respondent the form of acknowledgment of service on which respondent asserted that the notice of filing and the record below had been received but that the petition and brief had "not been served as required by Rule 38".

Counsel for the petitioners immediately mailed another copy of the petition and brief to respondent and also mailed to the clerk the said form of acknowledgment.

On March 31, 1945 counsel for the petitioners personally visited the office of the Clerk of this Court and was informed that respondent had objected to the correctness of the record as served upon it.

Upon returning to his office counsel found in his mail, on Saturday, April 21, 1945, a copy of respondent's "Brief in Opposition to Petition for Writ of Certiorari" and dictated a letter to the clerk requesting an opportunity to reply to it. This letter was typed and signed on Monday, April 23, 1945, but before mailing it a telegram was received from the clerk stating that Certiorari had been denied on that day. In response to the letter and a telegram the clerk informed counsel for the petitioners that a petition for rehearing might be filed.

Accordingly this Petition for Rehearing is filed in lieu of a brief in reply to the respondent's "Brief in Opposition to Petition for Writ of Certiorari."

## II.

## REPLY.

To respondent's "Brief in Opposition to Petition for Writ of Certiorari."

## ORDER OF TREATMENT.

The matter contained in the respondent's brief will be replied to in the order of that brief headed by appropriate page references to that brief.

### Page 2 of Respondent's Brief.

Assertion in Respondent's Brief:

"The validity of the cited sections of the Bankruptcy law were, at no time, in issue in the course of any of

> the proceedings upon which the decision of the Supreme Court of Pennsylvania was based. The issue before the Court was primarily an issue of fact and the question involved was whether there were pending any bankruptcy proceedings on behalf of the petitioner, Bessie Putnam, at the time the trial Court decided upon the question of its own jurisdiction to make sale of the mortgaged property and confirmed the sale."

Reply: The proceeding in the Court below was a proceeding in error upon Assignments of Error filed pursuant to Rule 22 of that Court which reads as follows:

> "RULE 22. Each error relied on must be specified particularly and by itself. If a specification embraces more than one point, or refers to more than one bill of exceptions, or raises more than one distinct question, it may be disregarded."

## THE ISSUE.

The issue in the court below was precisely what it was in the Court of Common Pleas, namely whether the state court had jurisdiction to entertain the Petition for Possession. That issue depended upon whether there was any proceeding pending in the Federal Court under Section 75 of the Bankruptcy Act; 11 U.S.C. 203, involving the property sought to be possessed.

**On that point the following is important:**

**THE COURT OF COMMON PLEAS DETERMINED THE ISSUE UPON THE PLEADINGS AND NOTHING ELSE. NO EVIDENCE WHATSOEVER WAS SUBMITTED.**

The opinion of the Judge of the Court of Common Pleas reads:

"Considering all the facts and circumstances in the light of authorities cited we can but concede that defendants' Answer, as a matter of law, is insufficient;" R. 103a, bottom of page.

The final order of the Court of Common Pleas which was the only order before the Court below, and necessarily therefore the only order before this Court, reads:

"the rule to show cause . . . is hereby made absolute for want of a sufficient answer by defendants and judgment is entered against defendants," R. 104a, top of page.

What is the nature of the answer?

## THE ANSWER.

The answer was drawn by the defendants in the suit for possession; the farmer debtors, the petitioners here,—not by an attorney. Though it is verbose and repetitious it nevertheless effectively sets forth their defense of no jurisdiction in the state court because of conflicting jurisdiction of the Federal Bankruptcy Court under Section 75—the farmer debtor law.

It showed that:

Bessie L. Putnam, defendant (petitioner here) filed her farmer debtor petition under Section 75 as Case No. 19681 in the bankruptcy court on September 10, 1936. We quote from it:

"Under this new Section 75, the so-called Frazier-Lemke Act, Bessie L. Putnam on September 10, 1936, still unable to pay her debts as they matured but mindful of the District Court's earlier objections, filed her petition No. 19681, together with her filing fee and schedules, which were accepted and approved by the District Court as properly filed. See Exhibit A, hereto attached." R. 78a, last half of page.

This is the Exhibit A referred to:

"This is to inform any one interested that on September 15th, 1936, a petition under Section 75 of the Bankruptcy Act was filed by Bessie L. Putnam, at No. 19681 in Bankruptcy, and that an order approving said petition has been entered. (signed) G. H. Berger, Clerk United States District Court." R. 91a, last half page.

The answer continues:

"inquiry was made of the District Court as to whether petition No. 19681 had been dismissed or whether it was still pending in the District Court. To this inquiry the Clerk of the District Court on July 2, 1942 made answer that: 'Bankruptcy case No. 19681 was filed by Bessie L. Putnam on September 10, 1936. The case is still pending on our dockets.' A certified copy of this statement by the Clerk is hereto attached as 'Exhibit B'." R. 78a-79a.

The Exhibit B referred to follows:

"UNITED STATES DISTRICT COURT
Office of the Clerk
Western District of Pennsylvania
Pittsburgh, Pa.
G. H. Berger, Clerk.

July 2, 1942.

Mr. Xeno W. Putnam,
Harmonsburg, Pa.

My dear Mr. Putnam,—

I have your letter of June 29, 1942, and you are advised that Bankruptcy case No. 19681 was filed by Bessie L. Putnam on September 10th, 1936.

The case is still pending on our dockets.

Sincerely yours,
(signed) G. H. Berger,
Clerk."

R. 92a, top of page.

Quoting further from the answer:

"Later, in reply to a request of mine made on or about the middle of October, 1942, I obtained a Certificate made under the seal of the 'District Court for the Western District of Pennsylvania,' wherein the Clerk states under date of October 19, 1942 that

'the records of this Court show that bankruptcy case was filed in this district by Bessie L. Putnam, on September 10th, 1936 at No. 19681 in Bankruptcy, and that said case is pending at this date.'

A Certified copy of this Certificate is hereto attached and made a part of this answer, marked, 'Exhibit C.' "

R. 79a, middle of page.

Exhibit C is as follows:

"Exhibit 'C.'

IN THE DISTRICT COURT OF THE UNITED STATES

For the Western District of Pennsylvania

CERTIFICATE

I, G. H. Berger, Clerk of the District Court of the United States for the Western District of Pennsylvania, do hereby certify that the records of this Court show that a bankruptcy case was filed in this district by Bessie L. Putnam, on September 10th, 1936 at No. 19681 in Bankruptcy, and that said case is pending at this date.

(Seal of U. S. District Court W. D. Pennsylvania.)

Witness my hand and the seal of this Court this 19th day of October, 1942.

(Signed) G. H. Berger, Clerk."

R. 92a-93a.

**THESE ARE THE FACTS PLEADED IN THE ANSWER TO THE PETITION FOR POSSESSION WHICH THE COURT OF COMMON PLEAS HELD INSUFFICIENT TO OUST THE CONTEMPORANEOUS JURISDICTIONS OF THE STATE COURT!**

If such facts do not oust the jurisdiction of a State Court while a farmer debtor case is pending in a Federal Court, then Section 75 (n); 11 USC 203 (n) "The filing of a petition . . . shall immediately subject the farmer and all his property . . . for all purposes of this section to the exclu-

sive jurisdiction of the [bankruptcy] court" **MEANS NOTHING.**

Then *Kalb* v. *Feuerstein,* 308 U. S. 433 (holding in sixteen different statements that farmer debtor jurisdiction in a bankruptcy court leaves a State Court Without Power) **MEANS NOTHING.**

**THE FARMER DEBTOR AND HER PROPERTY COULD NOT BE WITHIN THE JURISDICTION OF BOTH STATE AND FEDERAL COURTS AT THE SAME TIME.**

The attempt to argue that no such farmer debtor proceeding was contemporaneously pending in the federal court, in the face of undenied assertions in the answer supported by three certificates of the Clerk of the Bankruptcy Court, Exhibits A, B, and C, that it was, is a mere quibble. **IT WAS AND IS STILL SO PENDING.**

To argue that the validity of a federal statute is not involved merely because a state court refuses to heed it is not worthy of judicial note. This reference is to the statement in respondent's Brief in Opposition near the bottom of page 2, where it is said that:

> "Upon the basis of the record, the Supreme Court of Pennsylvania found that the petition in bankruptcy filed by Bessie Putnam had been dismissed and was not pending at the time of the entry by the Trial Court of the order in question R-56a."

The citation of "R-56a" in the quotation immediately above is to a vacuum so far as its pertinency is concerned. It is supposed that the record citation was intended to be R 55a. which is from an opinion of the Judge of the Court of Common Pleas, in a former proceeding to set aside the

sale of this same property on the same ground that the State Court had no power to conduct it. There the Judge referred to an order of July 9, 1940 in the Bankruptcy Court which will now be examined:

**LET IT BE CLEARLY UNDERSTOOD THAT THAT ORDER OF JULY 9, 1940 DID NOT DISMISS THE FARMER DEBTOR CASE. IT MERELY DISMISSED FARMER DEBTOR'S "PETITION FOR APPRAISERS TO DETERMINE THE REASONABLE PRESENT MARKET WORTH OF ASSETS".**

Here are quoted the essential skeletal operative words of that order of July 9, 1940:

> "'And now, to-wit, July 9, 1940, the matter of the Petition for Appraisers to Determine The Reasonable Present Market Worth of Assets under Section 75 subsection (s) of the Bankruptcy Act, as presented by Bessie L. Putnam, debtor, . . . came on for hearing in Open Court, and . . . the above petition of Bessie L. Putnam, debtor, is hereby refused and denied.'" R. 54a to 55a.

The Judge of the Court of Common Pleas after quoting the full order of the Bankruptcy Court of July 9, 1940 concludes that:

> "The Order very clearly shows that all proceedings in the said Court are now dismissed" R. 55a, bottom of page.

When did it become the law that in the face of the categorical **certificate** of a bankruptcy court that a case is pending before it, a judge of a state court by **interpretation** of an order of the bankruptcy court may decide that the record of the Federal Court is false?

## THE INTERPRETATION IS FALSE.

Because of the erroneous interpretation put upon the proceeding in the Federal Court whereby the Judge of the state overrides the Certificate of the Federal Court, the history of various Putnam farmer debtor cases in the Federal Court are here related.

1. In 1935 the petitioners, Xeno and Bessie Putnam, presented their joint petition as farmer debtors to the bankruptcy court which refused to file it.

> "Their petition and filing fee together with their schedules were returned to them promptly, the said District Court objecting to the filing of a joint petition." R. 78a, top of page.

2. Xeno W. Putnam then filed his farmer debtor petition under Section 75 (a) to (r) as Case No. 19164. Then followed the decision of this Court in *Louisville* v. *Radford*, 295 U. S. 555, holding the then **Section 75 (s)** unconstitutional, and although it had no application to cases under Section 75 (a) to (r) the Court of Common Pleas ordered the sale of the farmer debtor's farm to proceed, and the farm was sold. R. 6a.

Thereafter the Bankruptcy Court **unlawfully** dismissed this Case 19164 on the old repudiated ground of "no proposal in compliance with Section 75" ("lack of good faith"). R. 39a. Exhibit A.

3. Xeno W. Putnam then filed his second farmer debtor petition, Case No. 19671. This case was likewise **unlawfully** dismissed by the Bankruptcy Court. R. 44a.

4. Xeno W. Putnam filed still another farmer debtor case, No. 20472, which also was unlawfully dismissed on the old repudiated ground of no "reasonable proposals or plans" and "no reasonable hope for rehabilitation" and the further ground that the farmer's **unlawful** dismissal was "*res adjudicata*"! R. 28a to R. 29a.

It should be noted here that the State Court, losing faith in the validity of its preceding proceedings in foreclosure, set aside its foreclosure sale and sheriff's deed on March 3, 1938 and started over again. R. 6a, bottom of page; R. 25a, bottom of page; R. 42a, top of page.

5. Meanwhile Bessie L. Putnam on September 10, 1936 filed her farmer debtor petition as Case No. 19681 which is **THE PRESENT PENDING CASE IN THE BANKRUPTCY COURT and we will here examine it.**

This Case No. 19681 was subjected to the same **unlawful** procedures that the other Putnam petitions had been subjected to with **THE DIFFERENCE THAT AFTER DISMISSAL THE BANKRUPTCY COURT RESUMED ITS JURISDICTION AND STILL RETAINS IT.**

On August 5, 1937 Bessie's petition under Section 75 a to r for Compromise or Extension was **unlawfully** dismissed on the old repudiated song that "the debtor has not complied with the requirements of Section 75." ("lack of good faith"—"no feasible proposal"). R. 42a to R. 43a. Exhibit D.

**The Bankruptcy Court regarded this as a termination of the Proceedings under Section 75 (a) to (r)—not precluding the further progress of the case into Section 75 (s)** for very soon thereafter Bessie filed her petition under Section 75 (s) for a stay order and the other associated procedure, and the Court entertained it.

This petition for a moratorium under Section 75 (s) is still pending. See the three Certificates of the Clerk of the Bankruptcy Court where the case was filed and still pends: R. 91a, Exhibit A; R. 92a, Exhibit B; R. 92a to 93a, Exhibit C.

**These Certificates show the case still pending as late as October 19, 1942, long after the Petition for Possession was filed on September 28, 1942. R. 72a.**

Under her Section 75(s) proceeding Bessie L. Putnam filed in the Bankruptcy Court her "Petition for Appraisers to Determine The Reasonable Present Market Worth of Assets under Section 75, Subsection (s)". (See first sentence of "Order of Court" at bottom of R. 50(a) and top of 51(a).)

This was the very same kind of application that was made and denied by the farmer debtors in *Borchard* v. *California Bank*, 310 U. S. 311, where the case itself was left pending.

These dates are important:

July 9, 1940. Petition for Appraisers denied by Bankruptcy Court. R. 50(a) to R. 51(a) "Order of Court."

July 2, 1942. Certificate of Clerk of Bankruptcy Court that the case was then still pending. R. 92a, Exhibit C.

October 19, 1942. Certificate of Clerk of Bankruptcy Court that the case was still pending. R. 92a to R. 93a. Exhibit C.

**THE FACT THAT THE BANKRUPTCY COURT RESUMED ITS JURISDICTION, AND STILL RETAINS IT, IS AS BRIGHT AND CONSPICUOUS AS THE SUN ITSELF.**

**Page 6 of Respondent's Brief.**

Assertion in Respondent's Brief:

> "The argument of the petitioners completely ignores the fact that no proceedings in bankruptcy were pending when the trial Court entered its order of July 23, 1940, (R-56a) denying their petition in the nature of exceptions to the sheriff's sale."

Does this Court give higher recognition and validity to this statement by the respondent than it accords to the Clerk of the Bankruptcy Court that on July 2, 1942 "The case is still pending on our dockets"? (R. 92a, top of page. Exhibit B, last sentence). And to the same official's statement on October 19, 1942 that "said case is pending at this date"?! (R. 92a to 93a, Exhibit C).

We care no more about the dismissal of the proceedings under Section 75 (a) to (r) than this Court did in *Wragg* v. *Federal*, 317 U. S. 325, where the case was dismissed and leave to file under Section 75 (s) denied and the dismissal and denial were appealed and the appeal dismissed and certiorari denied by this Court. 95 F. (2) 252; 305 U. S.

596. When, later the farmer debtor, Mrs. Wragg, again petitioned the Bankruptcy Court to proceed under Section 75 (s) she was sustained by this Court which disregarded all specious arguments anent "*res judicata*" and former dismissal.

**In Bessie Putnam's pending case the Bankruptcy Court did not refuse her right to file under 75 (s) and still keeps the case on its docket.**

Does the refusal of a bankruptcy court to grant a farmer debtor's application to the Court to proceed under Section 75(s) preclude the farmer debtor from again asking the court to do its duty while the case still pends?

**Page 9 of Respondent's Brief.**

Assertion:

> "The facts involved in the case of *Union Joint Stock Land Bank of Detroit* v. *Byerly*, 310 U. S. 1, 60 Sup. Ct. 773, cited by the Supreme Court of Pennsylvania, are almost identical with the facts in the instant case, and that decision controls the issues here involved."

There is no resemblance whatsoever between the *Byerly* case and this one. The difference was explained at page 8 of the petitioner's Brief in Support of their present Petition for Certiorari. Even in that case where the hiatus between the decision declaring the first Section 75(s) un-

consitutional and the passing of the present Section 75(s) occasioned the loss of title, three present members of this Court vigorously dissented, saying in the first sentence of their dissent that the effect of that decision was to "largely defeat the purpose of the Act" and concluding with the statement that it acted to afford a "ready means of circumventing the Act."

Will this Court project the *Byerly* decision still further into an entirely different state of facts?

**Page 13 of Respondent's Brief.**

Assertion:

> "This case reaches this Court against a background which is significant. The Respondent has been seeking to liquidate this loan for nine years."

True! The kind of arguments with which the respondent has relentlessly pursued the farmer debtors through four cases has resulted in a set of records unsurpassed for unlawful orders in farmer debtor cases. **Uniformly they have been unlawful.** They outrageously violated that orderly procedure which the statute requires. Every conceivable specious and plainly erroneous argument has been urged upon both state and federal courts.

We quote from the record a few of such arguments made by the respondent:

> "That the filing of an amended petition by Bessie L. Putnam, defendant and petitioner herein, in the United States District Court on August 23, 1939, is admitted but the mere filing thereof did not constitute any restraint on your respondent to pursue its execution or on the Sheriff of Crawford County to make

sale of the real estate as advertised by him." R. 65a, bottom of page, to top of R. 66a.

"Your respondent admits having knowledge at and prior to the date of the Sheriff's sale, on September 15, 1939, of the filing of the amended petition by the petitioner in the United States District Court but even so, the filing of said petition without proper judicial restraint could not operate to prevent the sale of the real estate as advertised by the Sheriff." R. 66a, middle of page.

"That the exclusive jurisdiction given to the Federal District Court by subsection (n) of Section 75 of the Bankruptcy Act is limited in its operation to proceedings pending from subsections (a) to (r) and when the proceedings advance into subsection (s) the state Court is reinvested with jurisdiction until such time as the District Court grants the three year stay as provided by subsection (s) or the proceedings in the state Court are otherwise restrained." R. 66a, bottom of page.

It is quite apparent that other, *ad hominum*, arguments must have been pressed upon the State Court from the following quotation from its order of May 5, 1941:

"Under the Act, the stay allowed by subsection (s) is for a three year period. In the instant case, defendant and her co-title holder have for divers reasons advanced stayed the proceedings for a period in excess of five years, during which time the farm has not been operated. In consequence of which the improvements have fallen into a poor state of repair—no payments, principal or interest, have been made upon the undenied indebtedness and taxes have been allowed to go unpaid and accumulate." R. 71a, bottom of page to R. 72a, top of page.

Thus echoing the District Court in *Wright* v. *Logan*, 315 U. S. 139.

"That the law and the decisions construing Section 75 of the Bankruptcy Act are clear that filing of de-

fendant's petition on August 23, 1939 to amend her earlier dismissed petition did not operate as an automatic restraint to prevent the sheriff's sale on September 15, 1939." R. 38a, top of page.

It is true that the respondent has for nine years been seeking to liquidate this estate. The lapse of nine years during which the farmer debtors have been struggling against all odds in state and federal courts that could be put in their way by a federal agency erected to sustain farmer debtors in their efforts to maintain their farm homes —all this time and struggle is the direct result of the obstructive tactics of the Federal Land Bank, respondent. Had the farmer debtor statute been observed from the beginning this case would long since have been closed.

Let the law prevail!

Respectfully submitted,

.....

ELMER MCCLAIN,
Lima, Ohio,
*Counsel for the Petitioners, Xeno W. Putnam and Bessie L. Putnam.*

Lima, Ohio
May 9, 1945

Certificate of Counsel.

I certify that the foregoing petition for rehearing is filed in good faith and not for delay.

.....

Elmer McClain,
Counsel for the Petitioners.